

STATE OF MICHIGAN
COURT OF APPEALS

In re WALKER/CUNNINGHAM, Minors.

UNPUBLISHED
December 15, 2015

No. 327761
Jackson Circuit Court
Family Division
LC No. 13-002770-NA

In re CUNNINGHAM, Minor.

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Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother and respondent-father appeal the order that terminated their parental rights to the minor children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication) and (j) (children will be harmed if returned to parent). For the reasons provided below, we affirm.

I. DOCKET NO. 327761

Respondent-mother challenges the statutory grounds supporting the termination of her parental rights to her two children. A trial court must terminate a respondent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). A finding is clearly erroneous if it leaves us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Here, the trial court terminated mother's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (j).

Termination pursuant to MCL 712A.19b(3)(c)(i) is proper if "182 or more days have elapsed since the issuance of an initial dispositional order" and the trial court finds by clear and convincing evidence that "[t]he conditions that led to the adjudication continue to exist and there

is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Respondent-mother had unresolved mental health issues at the time of the termination hearing, and she was incarcerated on her fourth domestic violence conviction. She also missed a substantial number of parenting time visits during this proceeding, and the record supports that her continued difficulties with her mental illness affected her ability to adequately parent the children. As a result, the "totality of the evidence" amply supports that respondent-mother "had not accomplished any meaningful change" in the conditions that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Moreover, there was no indication that respondent-mother's issues would be resolved within a reasonable time considering the children's ages. Mother had not demonstrated any significant progress with respect to her barriers to reunification, and any substantial change seemed unlikely. The children could not wait an indefinite amount of time for respondent-mother's improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). As a result, the trial court did not clearly err in relying on MCL 712A.19b(3)(c)(i) in terminating mother's parental rights.

Termination pursuant to MCL 712A.19b(3)(j) is proper if "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is return to the home of the parent." Here, mother's unresolved mental health issues and her lengthy domestic violence history would place the children at a risk of harm if they were returned to her care. Therefore, the trial court did not clearly err in finding that termination of respondent-mother's parental rights under MCL 712A.19b(3)(j) was warranted.

Respondent-mother also argues that termination of her parental rights was not in the best interests of the children. The trial court must find by a preponderance of the evidence that termination is in a child's best interest. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review this best-interests finding for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). Factors to be considered include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Further, we may also consider whether it is likely "that the child could be returned to [his or] her parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

Here, respondent-mother continued to suffer from her mental health problems at the time of the termination hearing. Given that it had been approximately 20 months since the children's removal, there was no indication that mother would make significant progress in resolving her issues and be able to provide the permanency and stability that the children deserved in the foreseeable future. Further, there was little evidence of a bond between mother and the children, given that she failed to attend a substantial number of parenting time visits. Therefore, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

II. DOCKET NO. 327762

Respondent-father argues that we should reverse the trial court's termination order because of his constitutional right to parent his child. While respondent-father is correct in asserting that there exists a fundamental right to parent, see *Stanley v Illinois*, 405 US 645, 651;

92 S Ct 1208; 31 L Ed 2d 551 (1972), he fails to recognize that this right is not absolute, *In re Sanders*, 495 Mich 395, 409; 852 NW2d 524 (2014). Once a statutory ground for termination is established by clear and convincing evidence, “the liberty interest of the parent no longer includes the right to custody and control of the children.” *In re Trejo*, 462 Mich 341, 355; 613 NW2d 407 (2000); see also *In re Moss*, 301 Mich App at 93-94 (WILDER, J. concurring). At that point, the parent’s interest “gives way to the state’s interest in the child’s protection.” *In re Trejo*, 462 Mich at 356. Notably, father does not directly challenge the statutory grounds that supported the trial court’s termination order. Nevertheless, because father almost entirely failed to comply with services throughout the proceeding, we find the trial court did not clearly err in finding that statutory grounds for termination existed. Father’s constitutional claim is, therefore, without merit.

Respondent-father also appears to raise a reasonable efforts argument on appeal. However, this issue was not included in his statement of questions presented; thus, it is abandoned and we need not consider it. MCR 7.212(C)(5); *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 553; 730 NW2d 481 (2007). Nevertheless, we have reviewed his claim and find it to be meritless, given that father failed to undertake his “commensurate responsibility” to participate in the services that were offered. *In re Frey*, 297 Mich App at 248.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Colleen A. O’Brien